

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

THE CITY OF RUTLAND, VERMONT,)	
)	
)	
Plaintiff,)	Civil No. 2:15-cv-35
)	
v.)	Hon. William K. Sessions III
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY; GINA McCARTHY,)	
ADMINISTRATOR; UNITED STATES)	
ENVIRONMENTAL PROTECTION AGENCY)	
REGION 1; and CURT SPALDING,)	
REGIONAL ADMINISTRATOR,)	
)	
Defendants.)	
)	

PLAINTIFF'S STATUS REPORT

COMES NOW, Plaintiff, The City of Rutland, Vermont (the “City”), by and through its attorneys, Facey Goss & McPhee, P.C., and hereby submits the following status report pursuant to the Court approved Long-Term Stay in the above-referenced matter. This report summarizes the activity between July 2020 and January 2021 based upon the agreement between the State of Vermont Agency of Natural Resources (ANR) and the City to work cooperatively toward the development of a temperature TMDL and modify conditions along Moon Brook and its tributaries for the purpose of achieving Vermont Water Quality Standards.

THERMAL TMDLS

As described in previous status reports to this Court, ANR issued two Draft Temperature TMDLs in early September 2017 (one for a portion of Moon Brook and one for a short section of Mussey Brook, a tributary). The City received notice on May 14, 2018 that EPA Region 1 approved the Temperature TMDLs for Moon and Mussey Brooks.

IMPOUNDMENT MODIFICATIONS

Impoundment modification preliminary designs have been completed by Milone and MacBroom. The City sought participation in the final design, permitting and construction of the project with the U.S. Army Corps of Engineers (USACE) beginning in 2019 and through most of 2020. The City and USACE acquired all of the approvals needed under the USACE Section 542 program in 2020 and began negotiating partnership agreements and budgets for the final design. It became apparent through those conversations that the USACE Section 542 program was geared for much larger and more complex projects. For example, the cost of the design would increase dramatically, even if the City paid its consultant directly without USACE support. The requirements of the program were such that the cost would increase significantly and impose additional delays of up to a year. Looking forward through construction, the City became concerned that the benefits of the Section 542 program could be offset by the added cost in dollars and time. The estimated project cost without USACE involvement is \$1.3 million and with USACE it would be at least \$1.7 million, and it would be reasonable to expect the project timeline would need to be expanded by some number of years. In late 2020, prior to executing the final agreements, the City decided to withdraw from the USACE program.

The City executed a contract with Milone and MacBroom for \$126,000 to complete the final design and permitting, using Vermont's Clean Water State Revolving Fund (CWSRF) planning funds. The City has previously been awarded \$660,000 in Watershed Improvement Sponsorship Program (WISPr) funding for the first stage of construction, which is planned to commence sometime in 2021. In the meantime, the City will seek additional funding for the balance of the work. It is hoped that the dam modifications and related infrastructure work can be completed with the available funds, but this must be confirmed through the final design and cost estimating. If that proves to be the case and funding is not available to complete part or all of the balance of the work, the nature of that work is such that the City can complete it with in-house

resources.

The City has prepared draft agreements with property owners that abut Piedmont Pond to secure legal access to the riparian zone required for plantings. The survey and design indicate that only four abutters need to execute easements to give the City control of all required lands, and one of these is the owner of the parcel that is being offered to the City as a gift. Negotiations with these abutters are planned for the next few months.

TREE PLANTING PLANS

The City timely completed and submitted to DEC tree planting plans on public and private lands, which were not approved, as ANR determined that they did not contain sufficient detail regarding locations and species of plantings. It was agreed that the consultant's work should provide the needed information, so the deadline was extended. On March 27, 2019, the revised planting plan was submitted. ANR responded by email on May 5th, with relatively minor comments. The plans were modified in response to the comments and approved by DEC.

ROAD SALT REDUCTION PLAN

The City has modified its winter maintenance program to reduce the use of road salt city-wide. On November 6, 2017, the 'plan' was submitted to ANR for review. ANR has essentially approved the plan with several additional suggestions.

STORMWATER TREATMENT

The City received a grant to prepare a Moon Brook Stormwater Management Plan which has identified potential projects to meet the flow reduction targets in the stormwater TMDL for Moon Brook. The consultants have identified 30 potential projects within the Moon and Mussey Brook watersheds that would contribute to meeting flow requirements under the stormwater TMDL. Three projects were selected for preliminary design work.

The Rutland Natural Resources Conservation District has applied to the Lake Champlain Basin Program to prepare a Phosphorous Reduction Plan for the City, which will complement the

Stormwater Management Plan already completed for Moon Brook. Efforts to get private property owners to accept stormwater mitigation projects identified in the Plan have thus far been unsuccessful.

FINANCING

As referenced above, the City received approval from DEC for \$6,630,000 of qualifying CWSRF loans for WISPr loan funding. On May 18th, the City of Rutland Board of Aldermen approved an application to DEC for \$663,000 in WISPr loans, which under the program allow the DEC to reduce the interest rate on the CWSRF loans, effectively converting the WISPr loan into a grant. This is the first loan/grant under the Vermont WISPr program. The WISPr funds are now available.

In late 2020 the City applied for a Step 1 Planning Advance under the VT CWSRF to fund the final design of the pond modifications, which was approved in the amount of \$126,000.

DATED at Rutland, Vermont this 5th day of February, 2021.

FACEY GOSS & McPHEE, P.C.

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